

Attachment A

Raak, Amber M.

To: Raak, Amber M.
Subject: FW: Activity in Case 1:22-cv-00809-JRR Hanley v. State Farm Mutual Automobile Insurance Company Order on Motion to Dismiss for Failure to State a Claim

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Subject: Activity in Case 1:22-cv-00809-JRR Hanley v. State Farm Mutual Automobile Insurance Company Order on Motion to Dismiss for Failure to State a Claim

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U.S. District Court

District of Maryland

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Case Name: Hanley v. State Farm Mutual Automobile Insurance Company

Case Number: [1:22-cv-00809-JRR](#)

Filer:

Document Number: 34(No document attached)

Docket Text:

PAPERLESS ORDER: For the reasons set forth on the record at this mornings oral ruling from the bench, the Motion to Dismiss at ECF [18] is DENIED. Signed by Judge Julie Rebecca Rubin on 12/21/2022. (ybs, Deputy Clerk)

1:22-cv-00809-JRR Notice has been electronically mailed to:

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1:22-cv-00809-JRR Notice will not be electronically delivered to:

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

KENNETH CHARLES HANLEY, on)
behalf of himself and others)
similarly situated,)
Plaintiff,) Civil No.
vs.) 1:22-cv-0809-JRR
STATE FARM AUTOMOBILE INS. CO.) Baltimore, Maryland
Defendant.) December 22, 2022
) 11:40 a.m.

THE ABOVE-ENTITLED TELECONFERENCE CAME ON FOR
ORAL RULING
BEFORE THE HONORABLE JULIE R. RUBIN

A P P E A R A N C E S

On Behalf of the Plaintiff:

Adam Abelson, Esquire
Aiza Siddiqi, Esquire
Benjamin S. Salsbury, Esquire
James B. Finley, Esquire
Marybeth V. Gibson, Esquire
R. Brent Irby, Esquire
N. Nickolas Jackson, Esquire
Dylan Elliott, Esquire

On Behalf of the Defendant:

N. Nickolas Jackson, Esquire
Laura B. Jacobs, Esquire

(Computer-aided transcription of stenotype notes)

Reported by:

Ronda J. Thomas, RMR, CRR
Federal Official Reporter
101 W. Lombard Street, 4th Floor
Baltimore, Maryland 21201

1 (11:40 a.m.)

2 **THE COURT:** Good morning, this is Judge Rubin calling
3 the case of Kenneth Hanley, et al. v. State Farm Mutual
4 Automobile Insurance Co., Case 22-cv-809. Who have I got on
5 the record, please, for Plaintiff?

6 **MR. ABELSON:** Good morning, Your Honor. This is Adam
7 Abelson of Zuckerman Spaeder, joined on the line by my
8 colleague Aiza Siddiqi as well as co-counsel Brent Irby, Mary
9 Beth Gibson, Ben Salsbury, Nickolas Jackson, and Dylan Elliott.

10 **THE COURT:** Welcome, Counsel. And for defense?

11 **MR. HERZOG:** Good morning, Your Honor. This is Peter
12 Herzog on behalf of State Farm.

13 **MS. JACOBS:** Good morning, Laura Jacobs also on behalf
14 of State Farm.

15 **THE COURT:** All right. Is there anyone else that
16 we're waiting for or anyone else on the line? All right.
17 Thank you all very much. I do apologize for being late. I had
18 a matter that ran a little longer than I anticipated. I
19 appreciate your patience and I'm sorry for having you wait.

20 We're here for me to render an oral ruling on the Motion
21 to Dismiss filed by Defendant at ECF No. 18. I have reviewed
22 all of the court papers. I have determined that a hearing is
23 not necessary pursuant to Local Rule 105.6, and I will now
24 relay the ruling of the Court.

25 State Farm Mutual Automobile Insurance Company, or State

1 Farm, is an Illinois corporation with its corporate
2 headquarters is Bloomington, Illinois. The Defendant is
3 authorized to do business in Maryland and engaged in marketing,
4 sale and issuance of automobile insurance policies in Maryland.

5 As an aside, I will say of course that for purposes of
6 this opinion I have accepted as true the well-pled facts set
7 forth in the Complaint, and these are those facts.

8 Plaintiff, Kenneth Charles Hanley, resides in Maryland and
9 contracted with Defendant for automobile insurance and the
10 action arises from Defendant's alleged, quote, "Improper scheme
11 and uniform business practice of taking improper and arbitrary
12 Typical Negotiation Reduction, as that term is defined, on all
13 Maryland total loss claims in order to systematically
14 undervalue total loss claims and illegally increase Defendant's
15 own profits," end quote.

16 On about March 6, 2019, Plaintiff filed a claim for loss
17 under his State Farm policy. Under the terms of State Farm's
18 insurance policy with Plaintiff, State Farm had the option
19 either to pay the cost to repair the vehicle minus any
20 deductible or pay the vehicle its pre-accident cash value minus
21 any applicable deductible.

22 State Farm determined that Mr. Hanley's vehicle was a
23 covered vehicle and under the policy declared it a total loss.
24 Once Defendant determines a vehicle is a total loss, Plaintiff
25 alleges that the policy requires the Defendant to pay the

1 actual cash value of the vehicle less any applicable
2 deductible. State Farm determined the actual cash value by
3 using an Autosource valuation report prepared by an entity
4 called Audatex.

5 Audatex uses a program called "Autosource Market-Driven
6 Valuation" to calculate the value of a total loss vehicle.
7 Plaintiff alleges that Defendant uses the Autosource system to
8 calculate what Defendant then represents to be the actual cash
9 value of the total loss vehicle, and Plaintiff takes issue with
10 the second step of the Autosource calculation where the system
11 reduces the advertised price of each comparable vehicle by a
12 fixed percentage to account for what State Farm asserts is a
13 typical negotiation and this price has been listed as the
14 selling price.

15 Plaintiff alleges that the typical negotiation reduction
16 that Defendant took in calculating the amount to be paid to him
17 was between 6 and 8 percent, ultimately reducing the amount the
18 Defendant paid Plaintiff by \$675.75.

19 According to Plaintiff, State Farm's insurance policies
20 don't mention any typical negotiation reduction and they don't
21 authorize it. Plaintiff alleges that when Defendant utilizes
22 the typical negotiation reduction, the payment for a total loss
23 vehicle is substantially less than the actual cash value and
24 constitutes a methodology that does not produce
25 statistically-valid, fair market values for a substantially

1 similar vehicle.

2 Plaintiff further alleges that the typical negotiation
3 reduction, quote, "Is arbitrarily applied at the universal
4 percentage reduction to any vehicle in a given price range,"
5 end quote.

6 On April 4th of this year, Plaintiff filed this case as a
7 Class action. The complaint sets forth two causes of action:
8 Breach of contract and declaratory injunction relief. The
9 prayer for relief seeks certification of the proposed Class,
10 appointment of Class counsel, obviously the Plaintiffs' counsel
11 here today, an order declaring that State Farm's use of a
12 typical negotiation reduction is unlawful, and enjoining the
13 Defendant from engaging in any further unlawful conduct. Also,
14 an award of damages, plus attorneys' fees, reimbursement of
15 litigation expenses, restitution or disgorgement, and any other
16 relief that the Court deems just and proper.

17 Defendant argues that the Court should dismiss the
18 complaint based upon the first-filed rule: The first-filed
19 rule is "When multiple suits are filed in different federal
20 courts upon the same factual issues, the first or prior action
21 is permitted to proceed to the exclusion of another
22 subsequently filed," end quote. That's *Allied-Gen Nuclear*
23 *Services* at 675 F.2d 610, specifically at Footnote 1 at
24 Page 611. That's out of the Fourth Circuit 1928.

25 The rule requires the second-filed court, quote, "To

1 consider whether the two competing actions are substantively
2 the same or sufficiently similar to come within the ambit of
3 the principle." That's the *Glodek* case, that's 2020 Westlaw
4 263476, out of this court in 2020, quoting *Scardino* at 2016
5 Westlaw 1321147 out of the District of South Carolina in April
6 of 2016.

7 The purpose of the rule is to avoid duplicative
8 litigation, to conserve judicial resources, and to ensure
9 judicial efficiency, consistency and comity. That's the *Income*
10 *Tax School* case at 2012 Westlaw 3249547 out of the Eastern
11 District of Virginia in 2012. Quote, "A district court
12 entertaining a motion pursuant to this rule can exercise its
13 discretionary authority by staying the second case, dismissing
14 it, or transferring it to the forum of the first case." That's
15 the *Intellor* case at 2019 Westlaw 1643549. That's out of this
16 court in 2019.

17 There are three non-exhaustive factors to help the Court
18 decide whether two actions are substantively the same. They
19 are the chronology of the filings, the similarity of the
20 parties involved, and the similarity of the issues at stake.
21 That's on the advice of the *Scardino* case.

22 A Rule 12(b)(6) motion tests the legal sufficiency of a
23 complaint. It does not resolve contests surrounding the facts,
24 the merits of the claim, or the applicability of defenses.
25 Accordingly, a Rule 12(b)(6) motion should only be granted if

1 after accepting all well-pleaded allegations in the plaintiff's
2 complaint as true and drawing all reasonable factual inferences
3 from those facts in the plaintiff's favor it appears certain
4 that the plaintiff cannot prove any set of facts in support of
5 his claim entitling him to relief.

6 The *Iqbal* case, the often-quoted *Iqbal* case and the
7 *Twombly* cases say that while legal conclusions can provide the
8 framework of a complaint they must be supported by factual
9 allegations. And turning to *Twombly*, factual allegations must
10 be enough to raise a right to relief above the speculative
11 level on the assumption that all of the allegations in the
12 complaint are true, even if doubtful in fact. Quote, "A
13 complaint that provides no more than labels and conclusions or
14 formulaic recitation of the elements of a cause of action is
15 insufficient," that's the *Bourgeois* case out of this court
16 3 F.Supp. 3d 423, District of Maryland 2014, quoting *Twombly* at
17 550 U.S., the pincite is Page 555.

18 First I'm going to address the consideration of exhibits.
19 Defendant attached three exhibits to its motion. Exhibit 1 is
20 the State Farm Car Policy booklet. Exhibit 2 is the Class
21 Action Complaint in the United States District Court for the
22 Northern District of Illinois, and Exhibit 3 is State Farm's
23 Written Request for Appraisal.

24 In ruling on a 12(b)(6) motion, a court usually does not
25 consider evidence outside of the complaint, but a court may

1 consider documents attached to the complaint as well as
2 documents attached to a motion to dismiss if the document is
3 integral to the complaint and their authenticity is not
4 disputed.

5 An integral document is a document that by its very
6 existence and not the mere information in it -- pardon me.

7 An integral document is a document that by its very
8 existence and not the mere information it contains gives rise
9 to the legal rights asserted, that's the *Chesapeake* case at 794
10 F.Supp. 2d at Page 611. Quote, "In addition to integral and
11 authentic exhibits, on a 12(b)(6) motion the court may properly
12 take judicial notice of matters of public record." That is the
13 same case, that's *Chesapeake* at Page 611 quoting *Philips* at 572
14 F.3d 176 at Page 180 out of the Fourth Circuit in 2009.

15 Specifically, the Court may take judicial notice of
16 publicly available information on state and federal government
17 websites without converting a motion to one for summary
18 judgment, that's the *U.S. v. Garcia* case out of the Fourth
19 Circuit in 2017 at 855 F.3d 615.

20 As an initial matter, I do note that Plaintiff attaches
21 two exhibits to his Complaint and pursuant to Federal Rules of
22 Civil Procedure 10(c), I will consider those exhibits as part
23 of the Complaint.

24 As I said, Defendants moved to dismiss the two counts of
25 the Complaint pursuant to 12(b)(6) and customarily I would not

1 be considering documents attached to a motion without
2 converting it to a motion for summary judgment as I've just
3 explained.

4 The Court does find that Exhibit 1 attached to the Motion
5 is integral to the Complaint and Plaintiff does not challenge
6 its authenticity. The car policy booklet, together with the
7 most recently-issued declarations page, and any endorsements
8 that apply, including those listed on that declarations page as
9 well as those issued in connection with any subsequent renewal
10 of this policy, make up the insurance policies at issue in the
11 Complaint. Exhibit 1 further provides, quote, "We agree to
12 provide insurance according to the terms of this policy," end
13 quote.

14 The Complaint alleges, quote, "On information and belief,
15 under the terms of State Farm's automobile insurance policies
16 with Plaintiff and the putative Class, when a policyholder
17 files a claim for loss caused to a covered vehicle, the
18 contract gives State Farm the option to either: A) pay the
19 cost to repair the vehicle minus any deductible; or B) pay the
20 vehicle's pre-accident actual cash value minus any applicable
21 deductible," end quote.

22 Additionally, the Complaint alleges that Plaintiff's
23 vehicle was a covered vehicle and Defendant exercised its
24 option to declare a total loss. The Defendant's obligations
25 with respect to a claim for a loss of a covered vehicle and its

1 right to declare a covered vehicle a total loss are outlined on
2 Pages 18 to 19 of the car policy booklet.

3 Plaintiff's complaint alleges issues with Defendant's
4 process in calculating the actual cash value which is an
5 obligation by State Farm expressly covered by the terms of the
6 policy. Accordingly, I do find that the State Farm car policy
7 booklet at Exhibit 1 to the Motion is material to and relied
8 upon in the Complaint because the very term of the contract
9 gives rise to Plaintiff's breach of contract and declaratory
10 relief action or claim.

11 I do also find that Exhibit 1 attached to the motion is
12 integral and authentic and therefore I will consider it on
13 resolution of the Motion pursuant to 12(b)(6).

14 In contrast, I find that Exhibits 2 and 3 are not integral
15 to the Complaint. With respect to Exhibit 2, the Class action
16 complaint out in Illinois, although Plaintiffs' claims are
17 similar to the claims in Exhibit 2, the Court finds that the
18 Plaintiffs' rights that form the basis of their claims arise
19 out of the very existence -- I should say I do not find that
20 they arise out of the very existence of Exhibit 2.

21 Plaintiffs' rights to bring actions for breach of contract
22 and declaratory relief are based on the terms of a written
23 contract between the parties and it has nothing to do with
24 claims filed by others similarly situated. Therefore,
25 Exhibit 2 is not integral to the Complaint. Notwithstanding, I

1 do note that it is a public record on a federal government
2 website. Accordingly, I will take judicial notice of
3 Exhibit 2, and I may consider it without converting the Motion
4 to a motion for summary judgment.

5 With respect to Exhibit 3, the written request for
6 appraisal that State Farm sent, I find that although the
7 request for appraisal was sent pursuant to the terms of the car
8 policy booklet, the letter itself does not give rise to
9 Plaintiffs' claims. Indeed Defendant may consider the request
10 important to a potential defense, but Plaintiffs' claims are or
11 the right to bring said claims don't arise at the very
12 existence of the request for appraisal. Accordingly, I will
13 not consider Exhibit 3 in resolving the Motion.

14 Defendant argues that the Court should dismiss Plaintiffs'
15 complaint based upon that first-filed rule. In the
16 alternative, Defendant argues that the Court should stay the
17 case, transfer it to the District Court for the Northern
18 District of Illinois.

19 As I've said before, based on this rule, I can exercise my
20 discretion to stay the second case, dismiss it, or transfer it
21 to the forum of the first case.

22 As discussed previously, I consider the following factors:
23 The chronology of the filing, the similarity of the parties
24 involved, and the similarity of the issues involved.

25 With respect to the first factor, it is undisputed that

1 the Williams v. State Farm case pending in the Northern
2 District of Illinois started before this present case.
3 Williams filed his complaint on March 18, 2022, Plaintiff filed
4 in this court on April 4th, 2022. However, in considering the
5 chronology of the filing, quote, "Priority should not be
6 measured exclusively by which complaint was filed first, but
7 rather in terms of how much progress has been made in the two
8 actions," end quote, that's the *Moses H. Cone Memorial Hospital*
9 case, 460 U.S. 1, 1983. And I will also command to your
10 attention the *Boatmen's First National Bank* case out of the
11 Eighth Circuit at 57 F.3d 638, again, Eighth Circuit, 1995,
12 acknowledging that the Court must also consider the history of
13 the case and factual circumstances of each case.

14 Moreover, the purpose of the first-filed rule importantly
15 is to ensure judicial efficiency, consistency and comity, as I
16 set forth earlier.

17 The Williams litigation in Illinois is a nationwide Class
18 action where defendants previously requested a stay due to the
19 broad scope of the lawsuit. The Illinois litigation involves
20 plaintiffs from a multitude of jurisdictions which has resulted
21 in several complex motions pending before that court. As a
22 result, the Northern District Court for Illinois has
23 temporarily stayed the case until those motions are resolved.
24 The present case involved Maryland plaintiffs only, which is a
25 much smaller scope than the Illinois litigation in terms of the

1 parties.

2 Further, the complexities present in the Illinois case are
3 less prevalent in this case where all plaintiffs are from the
4 same jurisdiction. This Court is presently able to address the
5 pending motions in this case and move the present litigation
6 along. Therefore, although the complaint in Williams was filed
7 first, the present case is smaller in scope and it would be far
8 more efficient to keep the present case in Maryland. Further,
9 I do note if the Court transferred this case to Illinois it
10 would be subject to the stay and ultimately stall this case,
11 not advance it.

12 Accordingly, I decline to dismiss, transfer or stay the
13 case based on the first-filed rule.

14 With respect to the mandatory appraisal issue, the
15 Defendant argues that Plaintiff failed to allege compliance
16 with the mandatory appraisal provision in the policy which is a
17 condition precedent to filing suit. Quote, "Insurance policies
18 are contracts and are treated and construed like any other
19 contract," end quote, that's the *Continental Casualty Company*
20 *v. Kemper* at 173, Md. App. 542 citing *Harleysville* 393 Maryland
21 83 in 2006 out of the Maryland Court of Appeals. Therefore,
22 ordinary principles of contract interpretation apply. When the
23 terms of a contract impose conditions precedent, those
24 conditions have to be filled before the contract becomes
25 enforceable. Under Maryland law a condition precedent is

1 defined as, quote, "A fact other than the mere lapse of time
2 which unless excused must exist or occur before a duty of
3 immediate performance of a promise arises," that is 270
4 Maryland 178 in 1973, which was quoted by the *Orazi* case out of
5 this court in 2018 at 2018 U.S. District, Lexis 152436, the
6 pincite is Page 12.

7 Although no particular form of words is necessary in order
8 to create an expressed condition, such words and phrases as
9 "if" and "provided that" are commonly used to indicate the
10 performance has expressly been made a condition as had the
11 words "when," "after," "as soon as," or "subject to," that
12 again is from the Court of Appeals in the *Chirichella v. Erwin*
13 270 Md. at pincite Page 182.

14 The provision in the State Farm car policy booklet is,
15 quote, "If there's a disagreement as to the actual cash value
16 of the covered vehicle then the disagreement will be resolved
17 by appraisal upon written request of the owner or us," end
18 quote.

19 The Plaintiff received a letter from State Farm offering
20 payment of the actual cash value which was identified as \$8,937
21 as the actual cash value of this vehicle. I understand the net
22 amount payable to you is listed as \$9,083.23.

23 According to the letter, this is Exhibit B, State Farm
24 indicated: To assist us in determining actual cash value we
25 consider information obtained by our representatives and

1 information provided by you, vehicle valuation services, and
2 other sources. If now or later you have additional information
3 you wish us to consider or if you believe we have not correctly
4 determined the actual cash value of your vehicle, please
5 contact us. And then it goes through the math of how it
6 arrived at the net amount to be paid. And finally, it
7 indicates: If you have any questions concerning this total
8 loss settlement or any other aspect of your claim please
9 contact us.

10 The letter, although it invites the Plaintiff to contact
11 State Farm if there are any questions or concerns, the letter
12 did not make reference to the report, and instead, as I just
13 relayed from the letter, explained that it based its
14 calculation on -- in a very sort of nondescript general
15 sources.

16 State Farm paid and Plaintiff accepted the net amount
17 payable to him according to that letter, which figured in an
18 actual cash value of \$8,937 as the actual cash value for his
19 vehicle. The transaction was completed absent a disagreement,
20 and Plaintiff does not allege that he had questions or
21 concerns.

22 The Court notes that the pleadings and papers at issue
23 here are silent as to whether Plaintiff had the Autosource
24 market-driven valuation report at the time he received the
25 offer of actual cash value from State Farm. Construing the

1 facts in the light most favorable to Plaintiff, it appears the
2 transaction -- it appears in the transaction that Plaintiff did
3 not have the report prior to completion of the transaction I
4 should say, pardon me.

5 Discovery may demonstrate that Plaintiff had the report at
6 the time he received the letter from Defendant and Defendant
7 may refile a motion for stay or reraise this issue if it's not
8 resolved on a motion for summary judgment. Surely, the
9 Plaintiff could have called and invited and inquired as to what
10 Defendant based its calculation on, the papers are silent as to
11 that. And in any event, at this stage of the proceeding, what
12 the record is, as it is, I do decline to stay or dismiss on
13 this basis. But as I say, the Defendant may reraise this
14 argument if the course of discovery bears fruit in developing
15 this issue.

16 Additionally, Defendant argues that Plaintiff cannot
17 demonstrate injury or Article III standing because Plaintiff
18 did not comply with the mandatory appraisal provisions. I
19 disagree. A party to a breached contract has
20 judicially-cognizable interest for standing purposes,
21 regardless of the merits of the breach alleged. That's *Stuart*
22 *v. State Farm*, 910 F.3d 371 out of the Eighth Circuit in 2018.
23 Further, in *Nichols v. State Farm* I agree with Judge Morrison
24 there that appraisal may have highlighted a weakness or
25 weakness in the merits of the Plaintiffs' claim. State Farm's

1 argument conflates Article III standing of injury in fact with
2 an issue on the merits; that of course is the case that I know
3 all on the phone are familiar with it but I will say it for the
4 record, the cite is 2022 Westlaw 6671695 out of the Southern
5 District of Ohio in October of this year.

6 As I've stated, set forth earlier, Plaintiff is not
7 required to comply with the mandatory appraisal provision
8 absent any disagreement, according to the language at issue.
9 An appraisal is not necessary for Plaintiff to establish
10 Article III standing. Plaintiff alleges injury when Defendant
11 allegedly breached the terms of the contract by basing the
12 actual cash value on what Plaintiff says is information not
13 identified in or allowed by the contract and that he was denied
14 the benefit for which he bargained, the actual cash value of
15 his vehicle. The Court finds that the mandatory appraisal
16 provision does not impair Plaintiffs' Article III standing.

17 In a footnote, the Defendant asserts that the suit should
18 be dismissed because of the doctrine of first breach. The
19 doctrine of first breach involves, quote, "A material failure
20 to perform by one party that prevents performance of the other
21 parties' remaining duties from becoming due at least
22 temporarily, and it discharges those duties if it has not been
23 cured during the time in which performance can occur," that's
24 the *Bollech v. Charles County* case out of the Fourth Circuit in
25 2003 at 69 Fed. App'x at 178 and citing the second restatement

1 of contract at § 237 comment A.

2 The Court finds that the mandatory appraisal provision is
3 not invoked without a disagreement about the actual cash value
4 of the vehicle. The transaction was complete without any
5 disagreement and/or perhaps because Plaintiff had no knowledge
6 of the report, but I don't know this at this point. In any
7 event, any breach for failure to participate in the appraisal
8 process would not have occurred after State Farm used the
9 typical negotiation reduction and therefore the doctrine of
10 first breach does not apply in my opinion.

11 Defendant further argues that even if the Court finds that
12 the mandatory appraisal provision is not a condition precedent
13 and that Plaintiff does have standing, Plaintiffs' breach of
14 contract action should be dismissed for three reasons: First,
15 because Plaintiff has no private right of action under the
16 Maryland insurance regs, and even if Plaintiff had a private
17 right of action, Plaintiff failed to exhaust administrative
18 remedies. Second, Defendant argues that Plaintiffs' breach
19 allegations are insufficient as a matter of law. And finally,
20 Defendant argues that Plaintiffs' implied covenant claim failed
21 because the expressed contract claim failed.

22 Under Maryland law the elements of a claim for breach of
23 contract include contractual obligation, breach and damages.
24 To state a claim for breach of contract under Maryland law the
25 plaintiff must allege with certainty and definiteness facts

1 showing a contractual obligation owed by the defendant to the
2 plaintiff and a breach of that obligation by the defendant,
3 that's *Continental Masonry* at 279 Md. 476 from 1977.

4 As set forth above, the ordinary principles of contract
5 interpretation apply to insurance policies. And if there's no
6 ambiguity in the terms of the contract, the Court is required
7 to enforce those terms. Where contract terms are ambiguous,
8 the contract, quote, "Will be construed liberally in favor of
9 the insured and against the insurer as drafter of the
10 instrument," that's the *Certain Underwriters at Lloyd's* case
11 from the Court of Special Appeals at 254 Md. App. 638.

12 Plaintiff brings one claim for breach of contract premised
13 on three theories: A violation of an expressed term of the
14 policy, a violation of the Code of Maryland Regulations, and a
15 violation of the implied covenant good faith and fair dealings.
16 Plaintiff alleges -- and I'm going to read fairly prolix from
17 the Complaint itself. These are Paragraphs 11, 13, 26, 48
18 through 52, 55 and 57 of the Complaint.

19 Plaintiff alleges, and I am quoting, "At all relevant
20 times, Plaintiff maintained, and continues to maintain, an
21 automobile insurance policy from State Farm. On information
22 and belief, Plaintiff's State Farm automobile insurance policy
23 is a form contract drafted and utilized by State Farm with
24 terms materially identical to the policies of the putative
25 Class members.

1 On information and belief, if State Farm determines that a
2 vehicle is a total loss, meaning that the cost to repair would
3 exceed the vehicle's value, the policies require State Farm to
4 pay the actual cash value of the vehicle minus any applicable
5 deductible. The term "actual cash value" is not defined in the
6 contract.

7 The parties' insurance policies do not mention any typical
8 negotiation reduction, let alone authorize it. Likewise,
9 there's no authorization under Maryland law permitting the
10 arbitrary typical negotiation reduction.

11 By applying the typical negotiation reduction to total
12 loss claims filed by Plaintiff and the Class, State Farm
13 breached its duties under the terms of the contract.

14 First, State Farm breached an expressed term of the
15 contract. Under the expressed terms of the contract, State
16 Farm had a duty to pay Plaintiff and the putative Class the
17 actual cash value minus any applicable deductible of their
18 coverage vehicles that State Farm determined to be a total
19 loss.

20 State Farm itself determined that Plaintiff and the
21 putative Class had suffered a total loss of a covered vehicle
22 or coverage vehicle. When State Farm paid Plaintiff and the
23 Class, however, it took a deduction for typical negotiation.
24 The typical negotiation reduction is not a legitimate component
25 of actual cash value because, among other things, it is

1 arbitrary, not based on objective or verifiable information,
2 and has no basis in the realities of the marketplace.

3 As described above, State Farm has violated Maryland total
4 loss regulation, and hence breached its contract with its
5 insured by, among other things, not basing its settlement of
6 total loss claims on the basis of the retail value for a
7 substantially similar motor vehicle from a nationally
8 recognized valuation manual or from a computerized database
9 that provides statistically valid fair market values for a
10 substantially similar vehicle. See COMAR §§ 31.15.12.04-.05.

11 The term "actual cash value" is undefined in the parties'
12 insurance contract that State Farm drafted and its meaning was
13 not resolved explicitly by the parties. The parties' contract
14 also does not mention or discuss the typical negotiation
15 reduction. State Farm thus had a duty to act reasonably and
16 refrain from taking opportunistic advantage of Plaintiff and
17 the putative Class when determining the actual cash value of
18 their vehicles."

19 That will conclude my long quote from the complaint.

20 The contract, as alleged by Plaintiff, provides the
21 Defendant had a duty to pay Plaintiff and putative Class
22 members the actual cash value, minus the applicable deductible,
23 of their coverage vehicles that Defendant determined to be a
24 total loss. Plaintiff clearly alleges the existence of a
25 contract between Plaintiff and Defendant in which Defendant

1 promises to pay the actual cash value of Plaintiff covered
2 vehicle. Plaintiff alleges the Defendant breached the contract
3 obligation to pay actual cash value by applying that typical
4 negotiation reduction. Plaintiff further alleges that the
5 typical negotiation reduction is not a legitimate valuation
6 component because it's not based on objective or verifiable
7 information and has no basis in the marketplace. Further,
8 Plaintiff alleges that the contract doesn't mention typical
9 negotiation reduction and that the Defendant's application of
10 the reduction results in payments substantially less than what
11 the actual cash value really is. Plaintiff supports this by
12 alleging that Defendant provides no data or explanation of
13 industry practices in its insurance policy or the valuation
14 report to support any typical negotiation reduction.

15 I find that Plaintiff alleges fact sufficient to state a
16 claim for breach of contract.

17 For purposes of completeness, I'm going to address
18 Defendant's remaining arguments as to Plaintiff's breach of
19 contracts claim.

20 First, with respect to the issue of Plaintiff resting on
21 the Maryland insurance regulation, and I will say that there's
22 no contest, Plaintiff does not in fact have that private cause
23 of action or right of action under Maryland insurance regs, and
24 Defendant argues further that even if the regulation is
25 incorporated into the policy that Defendant -- pardon me --

1 Plaintiff has failed to exhaust administrative remedies.

2 Further, Defendant argued that if the breach of contract
3 failed, again we've got the implied covenant of good faith and
4 fair dealing which fails, and in support Defendant relies on
5 that *Arthur* case, 569 F.3d 154 out of the Fourth Circuit in
6 2009. In *Arthur*, the Court affirmed the lower court's
7 dismissal of the Plaintiffs' claim because the Plaintiffs
8 failed to exhaust administrative remedies under the Maryland
9 insurance code, and the Court reasoned that administrative
10 exhaustion was required because Plaintiffs' claim was dependent
11 on the insurance code and the Plaintiffs would only succeed if
12 they could show that the Defendant violated the code.

13 This case is different. Plaintiff does not bring a
14 standalone cause of action under COMAR and whether Defendant
15 breached the expressed terms of the contract does not depend on
16 the Maryland insurance code. Because Plaintiff alleges facts
17 sufficient to state a claim for breach of contract, absent
18 reference to the code, Plaintiff is not required to exhaust
19 administrative remedies under the code in order to sustain its
20 action here.

21 Similarly, the breach of contract claim does not rest
22 solely on the implied covenant of good faith and fair dealing,
23 accordingly the motion as to Count 1 is denied.

24 Defendant argues next as to the declaratory injunction
25 relief count, that's Count 2, that Plaintiff's count fails

1 because it's duplicative of the breach of contract claim.

2 Further, Defendant argues that Plaintiff does not have a
3 standing to bring a claim for future or forward-looking
4 injunctive relief. Under 28 U.S.C. § 2201 a district court in
5 a case or controversy otherwise within its jurisdiction, like
6 this one, may declare the rights and other legal relations of
7 any interested party seeking such declaration whether or not
8 further relief is or could be sought. That's the *Penn-America*
9 *Insurance v. Coffey*, 368 F.3d 409 out of the Fourth Circuit in
10 2004. Quoting that section from 28 U.S.C.

11 A declaratory injunction is appropriate when the judgment
12 will serve a useful purpose in clarifying and settling the
13 legal relations in issue, and when it will terminate and afford
14 relief from uncertainty, insecurity, and controversy giving
15 rise to the proceeding; that's *Centennial Life Insurance v.*
16 *Poston*, 88 F.3d 255 out of the Fourth Circuit in 1996.

17 Further, quoting *Aetna Casualty v. Quarles* at 92 F.2d 321
18 out of the Fourth Circuit in 1937: "When declaratory relief
19 can be duplicative of claims already alleged, dismissal is
20 warranted," that's pursuant to the *Chevron* case at 113 F.Supp.
21 3d 807 out of the District of Maryland 2015.

22 At a motion to dismiss stage, courts have previously
23 allowed declaratory judgment claims to go forward because
24 dismissing claims at this juncture is generally recognized to
25 be premature and it can unfairly eliminate the possibility of

1 Class-wide relief rendering speculation about duplicative
2 relief inappropriate at this stage or at the inception of a
3 case.

4 Plaintiff requests a declaration on behalf of himself and
5 the Class he seeks to represent, but State Farm's application
6 of the typical negotiation reduction violates State Farm's
7 policies and COMAR and appropriate injunctive relief,
8 equitable, and monetary relief based on and flown out of the
9 declaration that Plaintiff seeks.

10 The success of Plaintiff's breach of contract claim will
11 not necessarily resolve Plaintiff's claim for declaratory
12 relief. The claim for declaratory relief is distinct from the
13 breach of contract claim because it seeks an injunction to
14 prevent State Farm from applying the typical negotiation
15 reduction when determining the actual cash value of insured
16 vehicles.

17 A declaratory judgment in favor of Plaintiffs would
18 prevent Defendant from violating the policy of further harming
19 Class members, according to Plaintiff.

20 Additionally, Plaintiff alleges that the conduct remains
21 ongoing and there's no indication that Defendant had stopped
22 applying the typical negotiation reduction. Therefore, the
23 motion as to Count 2, in particular given the juncture of the
24 case, is denied.

25 Defendant next argues that if the Court denies the Motion

1 to Dismiss that I should compel appraisal and stay the action
2 pending the outcome of the appraisal. In *Nichols*, the Court
3 addressed an identical lawsuit and issues. As the Court did in
4 *Nichols*, this Court recognizes that State Farm believes the
5 term "actual cash value" properly includes a typical
6 negotiation deduction and the Plaintiff disputes that.

7 The issue in this case centers around the term "actual
8 cash value" and whether the typical negotiation reduction is
9 permitted by the expressed term of the insurance policy. While
10 I do appreciate that an appraisal may implicate damages, a
11 separate appraisal is not going to alter the nature of the
12 contract dispute in this lawsuit, and therefore I decline to
13 compel an appraisal and stay the proceeding. For the reasons
14 I've set forth here today on the record, the Motion is denied,
15 and I will issue a separate order accordingly.

16 Counsel, I thank you for being on the record for that,
17 that is the conclusion of the Court's ruling. If there is
18 nothing else, we can adjourn the proceeding.

19 Does anyone need to be heard?

20 **MR. HERZOG:** I do not on behalf of State Farm.

21 **THE COURT:** For Plaintiff does anyone need to be
22 heard?

23 **MR. ABELSON:** No, nothing. This is Adam Abelson.
24 Thank you.

25 **THE COURT:** All right, Mr. Abelson.

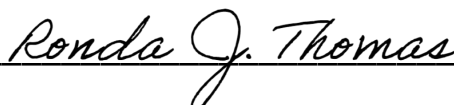
1 And thank you, Mr. Herzog and Ms. Jacobs, for the defense.
2 I wish everyone a pleasant holiday, stay safe, and I will issue
3 an order this afternoon. Thank you. Court is adjourned.

4 (All Counsel - "Thank you, Your Honor.")
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1 CERTIFICATE OF OFFICIAL REPORTER
2
3

4 I, Ronda J. Thomas, Registered Merit Reporter, Certified
5 Realtime Reporter, in and for the United States District Court
6 for the District of Maryland, do hereby certify, pursuant to 28
7 U.S.C. § 753, that the foregoing is a true and correct
8 transcript of the stenographically-reported proceedings held in
9 the above-entitled matter and the transcript page format is in
10 conformance with the regulations of the Judicial Conference of
11 the United States.

12 Dated this 28th day of December 2022.
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17 Ronda J. Thomas, RMR, CRR
18 Federal Official Reporter
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25

<div>MR. ABELSON: [2] 2/6 26/23</div> <div>MR. HERZOG: [2] 2/11 26/20</div> <div>MS. JACOBS: [1] 2/13</div> <div>THE COURT: [5] 2/2 2/10 2/15 26/21 26/25</div> <div>\$</div> <div>\$675.75 [1] 4/18</div> <div>\$8,937 [2] 14/20 15/18</div> <div>\$9,083.23 [1] 14/22</div> <div>.</div> <div>.05 [1] 21/10</div> <div>1</div> <div>10 [1] 8/22</div> <div>101 [1] 1/24</div> <div>105.6 [1] 2/23</div> <div>11 [1] 19/17</div> <div>113 [1] 24/20</div> <div>11:40 [2] 1/8 2/1</div> <div>12 [7] 6/22 6/25 7/24 8/11 8/25 10/13 14/6</div> <div>13 [1] 19/17</div> <div>1321147 [1] 6/5</div> <div>152436 [1] 14/5</div> <div>154 [1] 23/5</div> <div>1643549 [1] 6/15</div> <div>173 [1] 13/20</div> <div>176 [1] 8/14</div> <div>178 [2] 14/4 17/25</div> <div>18 [3] 2/21 10/2 12/3</div> <div>180 [1] 8/14</div> <div>182 [1] 14/13</div> <div>19 [1] 10/2</div> <div>1928 [1] 5/24</div> <div>1937 [1] 24/18</div> <div>1973 [1] 14/4</div> <div>1977 [1] 19/3</div> <div>1983 [1] 12/9</div> <div>1995 [1] 12/11</div> <div>1996 [1] 24/16</div> <div>1:22-cv-0809-JRR [1] 1/5</div> <div>2</div> <div>2003 [1] 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A arguments [1] 22/18 arise [3] 10/18 10/20 11/11 arises [2] 3/10 14/3 around [1] 26/7 arrived [1] 15/6 Arthur [2] 23/5 23/6 Article [4] 16/17 17/1 17/10 17/16 as [47] aside [1] 3/5 aspect [1] 15/8 asserted [1] 8/9 asserts [2] 4/12 17/17 assist [1] 14/24 assumption [1] 7/11 attached [6] 7/19 8/1 8/2 9/1 9/4 10/11 attaches [1] 8/20 attention [1] 12/10 attorneys' [1] 5/14 Audatex [2] 4/4 4/5 authentic [2] 8/11 10/12 authenticity [2] 8/3 9/6 authority [1] 6/13 authorization [1] 20/9 authorize [2] 4/21 20/8 authorized [1] 3/3 automobile [8] 1/7 2/4 2/25 3/4 3/9 9/15 19/21 19/22 Autosource [5] 4/3 4/5 4/7 4/10 15/23 available [1] 8/16 avoid [1] 6/7 award [1] 5/14	because [14] 10/8 16/17 17/18 18/5 18/15 18/21 20/25 22/6 23/7 23/10 23/16 24/1 24/23 25/13 becomes [1] 13/24 becoming [1] 17/21 been [4] 4/13 12/7 14/10 17/22 before [6] 1/11 11/19 12/2 12/21 13/24 14/2 behalf [7] 1/4 1/14 1/19 2/12 2/13 25/4 26/20 being [2] 2/17 26/16 belief [3] 9/14 19/22 20/1 believe [1] 15/3 believes [1] 26/4 Ben [1] 2/9 benefit [1] 17/14 Benjamin [1] 1/16 Beth [1] 2/9 between [3] 4/17 10/23 21/25 Bloomington [1] 3/2 Boatmen's [1] 12/10 Bollech [1] 17/24 booklet [6] 7/20 9/6 10/2 10/7 11/8 14/14 Bourgeois [1] 7/15 breach [23] 5/8 10/9 10/21 16/21 17/18 17/19 18/7 18/10 18/13 18/18 18/22 18/23 18/24 19/2 19/12 22/16 22/18 23/2 23/17 23/21 24/1 25/10 25/13 breached [7] 16/19 17/11 20/13 20/14 21/4 22/2 23/15 Brent [2] 1/17 2/8 bring [4] 10/21 11/11 23/13 24/3 brings [1] 19/12 broad [1] 12/19 business [2] 3/3 3/11	26/18 cannot [2] 7/4 16/16 car [6] 7/20 9/6 10/2 10/6 11/7 14/14 Carolina [1] 6/5 case [45] cases [1] 7/7 cash [31] Casualty [2] 13/19 24/17 cause [3] 7/14 22/22 23/14 caused [1] 9/17 causes [1] 5/7 Centennial [1] 24/15 centers [1] 26/7 certain [2] 7/3 19/10 certainty [1] 18/25 CERTIFICATE [1] 27/6 certification [1] 5/9 Certified [1] 28/4 certify [1] 28/6 challenge [1] 9/5 CHARLES [3] 1/3 3/8 17/24 Chesapeake [2] 8/9 8/13 Chevron [1] 24/20 Chirichella [1] 14/12 chronology [3] 6/19 11/23 12/5 Circuit [11] 5/24 8/14 8/19 12/11 12/11 16/22 17/24 23/5 24/9 24/16 24/18 circumstances [1] 12/13 cite [1] 17/4 citing [2] 13/20 17/25 Civil [2] 1/5 8/22 claim [25] 3/16 6/24 7/5 9/17 9/25 10/10 15/8 16/25 18/20 18/21 18/22 18/24 19/12 22/16 22/19 23/7 23/10 23/17 23/21 24/1 24/3 25/10 25/11 25/12 25/13 claims [14] 3/13 3/14 10/16 10/17 10/18 10/24 11/9 11/10 11/11 20/12 21/6 24/19 24/23 24/24 clarifying [1] 24/12 Class [17] 5/7 5/9 5/10 7/20 9/16 10/15 12/17 19/25 20/12 20/16 20/21 20/23 21/17 21/21 25/1 25/5 25/19	Class-wide [1] 25/1 clearly [1] 21/24 co [3] 1/7 2/4 2/8 co-counsel [1] 2/8 code [7] 19/14 23/9 23/11 23/12 23/16 23/18 23/19 Coffey [1] 24/9 cognizable [1] 16/20 colleague [1] 2/8 COMAR [3] 21/10 23/14 25/7 come [1] 6/2 comity [2] 6/9 12/15 command [1] 12/9 comment [1] 18/1 commonly [1] 14/9 Company [2] 2/25 13/19 comparable [1] 4/11 compel [2] 26/1 26/13 competing [1] 6/1 complaint [31] complete [1] 18/4 completed [1] 15/19 completeness [1] 22/17 completion [1] 16/3 complex [1] 12/21 complexities [1] 13/2 compliance [1] 13/15 comply [2] 16/18 17/7 component [2] 20/24 22/6 Computer [1] 1/22 Computer-aided [1] 1/22 computerized [1] 21/8 concerning [1] 15/7 concerns [2] 15/11 15/21 conclude [1] 21/19 conclusion [1] 26/17 conclusions [2] 7/7 7/13 condition [5] 13/17 13/25 14/8 14/10 18/12 conditions [2] 13/23 13/24 conduct [2] 5/13 25/20 Cone [1] 12/8 Conference [1] 28/10 conflates [1] 17/1 conformance [1] 28/10 connection [1] 9/9 conserve [1] 6/8 consider [12] 6/1 7/25	8/1 8/22 10/12 11/3 11/9 11/13 11/22 12/12 14/25 15/3 consideration [1] 7/18 considering [2] 9/1 12/4 consistency [2] 6/9 12/15 constitutes [1] 4/24 construed [2] 13/18 19/8 Construing [1] 15/25 contact [3] 15/5 15/9 15/10 contains [1] 8/8 contest [1] 22/22 contests [1] 6/23 Continental [2] 13/19 19/3 continues [1] 19/20 contract [44] contracted [1] 3/9 contracts [2] 13/18 22/19 contractual [2] 18/23 19/1 contrast [1] 10/14 controversy [2] 24/5 24/14 converting [3] 8/17 9/2 11/3 corporate [1] 3/1 corporation [1] 3/1 correct [1] 28/7 correctly [1] 15/3 cost [3] 3/19 9/19 20/2 could [3] 16/9 23/12 24/8 counsel [6] 2/8 2/10 5/10 5/10 26/16 27/4 count [5] 23/23 23/25 23/25 23/25 25/23 counts [1] 8/24 County [1] 17/24 course [3] 3/5 16/14 17/2 court [45] court's [2] 23/6 26/17 courts [2] 5/20 24/22 covenant [4] 18/20 19/15 23/3 23/22 coverage [3] 20/18 20/22 21/23 covered [9] 3/23 9/17 9/23 9/25 10/1 10/5 14/16 20/21 22/1 create [1] 14/8 CRR [2] 1/23 28/16 cured [1] 17/23
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